

1 CROWELL & MORING LLP
2 Michael Kahn (CSB No. 57432, mkahn@crowell.com)
3 Gregory D. Call (CSB No. 120483, gcall@crowell.com)
4 Beatrice B. Nguyen (CSB No. 172961, bbnguyen@crowell.com)
5 275 Battery Street, 23rd Floor
6 San Francisco, CA 94111
7 Telephone: 415.986.2800
8 Facsimile: 415.986.2827

9
10 Attorneys for Plaintiffs
11 PeopleBrowsr, Pty., Ltd, PeopleBrowsr, Inc.
12
13
14
15
16

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8
9 COUNTY OF SAN FRANCISCO

10
11 PEOPLEBROWSR, INC., AND
12 PEOPLEBROWSR PTY., LTD.,
13 Plaintiff,
14 v.
15 TWITTER, INC.,
16 Defendant.

Case No.

**DECLARATION OF JOHN DAVID RICH
IN SUPPORT OF PLAINTIFFS'
APPLICATION FOR TEMPORARY
RESTRANING ORDER AND ORDER TO
SHOW CAUSE RE: PRELIMINARY
INJUNCTION**

1 I, John David Rich, declare as follows:

2 1. I am the founder and Chief Executive Officer of Plaintiffs PeopleBrowsr, Inc. and
3 PeopleBrowsr Pty., Ltd. (together, “PeopleBrowsr”). I make this declaration in support of
4 Plaintiffs’ Application for Temporary Restraining Order and Order to Show Cause Re
5 Preliminary Injunction. Except where the matters below are stated on information and belief, I
6 have personal knowledge of the facts set forth in this declaration and, if called as a witness, could
7 and would competently testify thereto.

8 2. Twitter is a platform that allows its 140+ million active members to post short
9 messages called “tweets” about what they are experiencing in real time. PeopleBrowsr receives
10 every one of the more than 340 million tweets posted on Twitter daily through what is called the
11 Twitter “Firehose,” and makes this massive flow of data useful by highlighting relevant
12 information, spotting trends, and identifying influential people.

13 3. Twitter intends to terminate PeopleBrowsr’s Firehose access on November 30,
14 2012, after which PeopleBrowsr would only have access to a fraction of the data available
15 through the Firehose. This would cause severe harm to PeopleBrowsr’s business. PeopleBrowsr
16 relies on the Firehose to provide deep analytics based on a comprehensive picture of Twitter
17 activity. A mere sample of Twitter data is insufficient to provide the analytics PeopleBrowsr’s
18 web users and organizational clients expect. Without the Firehose, PeopleBrowsr cannot provide
19 the products its users and contracting partners expect, and will suffer devastating damage to its
20 goodwill and business relationships.

21 **A. Twitter Is the Only Source for Its Unique Brand of Consumer Information.**

22 4. Twitter data is a unique and essential input for PeopleBrowsr’s business. Tweets
23 are public, contemporaneous reports on users’ experiences that provide unique feedback
24 regarding consumers’ reactions to products and brands. Twitter also allows millions of users to
25 respond to each other by, for example, reposting (“retweeting”) each others’ content or
26 mentioning each other in their own tweets. This web of interactions provides unique insight
27 about which members of communities are influential.

1 5. Social networking sites like Facebook are not public, and do not provide the same
2 rich set of public data regarding users' sentiments and influence. Data from these sites can serve
3 as a valuable complement to Twitter data. Indeed, when PeopleBrowsr was recently approached
4 by a Facebook analytics company called Swaylo that was seeking to sell its assets on favorable
5 terms, PeopleBrowsr took advantage of the opportunity in order to broaden the inputs for its
6 analytics. The Swaylo data is not a substitute for Twitter data, which is central and critical to
7 PeopleBrowsr's services. My customers and prospective customers are interested in data
8 analytics based on Twitter data. Supplementing Twitter data with data from other sites is
9 attractive to them – replacing Twitter data with data from other sites is not.

10 **B. PeopleBrowsr Built a Valuable Business Based on Twitter's Commitment to**
11 **Keep Access to Its Data Open.**

12 **1. Twitter Has Offered PeopleBrowsr the Firehose for Over Four Years.**

13 6. PeopleBrowsr has had a successful relationship with Twitter for over four years,
14 since I met Twitter's Chief Technology Officer in early 2008. By July 2008, Twitter and
15 PeopleBrowsr entered into a Content License Agreement that provided PeopleBrowsr access to
16 the Firehose at no cost. (A true and correct copy of this agreement is attached as Exhibit A.)

17 7. In June 2010, Twitter and PeopleBrowsr renewed that agreement, agreeing that
18 PeopleBrowsr would pay the greater of: (a) a minimum monthly fee of \$15,000, which would
19 increase by \$5000 per month with a cap of \$100,000 or (b) 25 percent of PeopleBrowsr's gross
20 revenue, net of third party revenue share. (A true and correct copy of this agreement is attached
21 as Exhibit B.) PeopleBrowsr was willing to pay Twitter 25 percent of its gross revenue because
22 there is no substitute for Twitter data. Twitter's revenue under this agreement has steadily grown,
23 and PeopleBrowsr now pays Twitter more than \$1 million per year for its Firehose access.

24 **2. PeopleBrowsr Provides Valuable Insight Utilizing the Full Firehose.**

25 8. PeopleBrowsr's real-time scoring engine receives three to four thousand tweets
26 every second through the Firehose; extracts useful information from the tweets, such as users'
27 location, gender, and communities; processes and tags the tweets for use in PeopleBrowsr's
28 analytics; and stores the tweets in its 100+ Terabyte data mine. PeopleBrowsr has received and

1 scored over 1,000 days of tweets for over 120 million people. PeopleBrowsr's products use this
2 comprehensive data mine to highlight relevant Twitter content, identify people with influence,
3 and monitor reaction to brands. PeopleBrowsr's leading offerings are Kred, its Playground and
4 Command Center products, and its API platform.

5 9. **Kred.** Kred rates the Influence and Outreach of over 120 million individuals in
6 over 200 different online communities. "Influence" measures users' ability to get other Twitter
7 users to engage with them by retweeting or replying to their tweets, mentioning them in their
8 tweets, or "following" them. Such activity reflects the ability to influence others and spread a
9 message. "Outreach," by contrast, measures users' willingness to spread others' messages.

10 10. One of PeopleBrowsr's key innovations is to track Influence and Outreach within
11 specific communities of interest. Kred places users in communities based on the interests they
12 express through Twitter Bios, the hashtags and keywords in their posts over the last 1,000 days,
13 and communities' response to their tweets. Kred then identifies the persons with the most
14 influence in those communities. The ability to identify and sort users into communities depends
15 on a comprehensive database of users' Bios and activity.

16 11. Kred Story presents a complete history of influencers' Twitter activity in a unique
17 visual stream that highlights relevant information and key interactions with others. Kred also
18 provides historical information regarding influential individuals, such as the topics and people
19 they reference in their tweets, the words they most frequently use, and the top Twitter users,
20 locations and communities mentioning them.

21 12. **Playground and Command Center.** PeopleBrowsr's "Playground" and
22 "Command Center" products allow organizations to monitor the real-time popularity of their
23 brand, identify influential people, and track the effectiveness of their marketing campaigns. By
24 tracking all mentions of a brand or product for the past 1000 days, PeopleBrowsr is able to
25 analyze, for example: (a) users' sentiment toward and engagement with the brand; (b) which of
26 the brand's tweets are being retweeted the most; (c) the influence of users engaging with the
27 brand; and (d) the brand's top communities and locations. Organizations can also track the
28

1 response to their Twitter marketing efforts, including how many people click on hyperlinks in
2 their tweets or retweet their tweets, and how many new “follows” their campaigns garner.

3 **13. API.** PeopleBrowsr’s API platform makes its innovations available to other
4 developers to create custom applications. For example, Radian6 integrates Kred into its customer
5 relationship management products so that their customers can obtain Influence and Outreach
6 scores for their sales targets. Mashable uses PeopleBrowsr’s API to rank the amount of buzz
7 created by a topic. PeopleBrowsr’s API allows for a wide range of innovative uses for its
8 analytics, including groundbreaking research on threat identification for the Department of
9 Defense.

10 **3. PeopleBrowsr’s Products Are Highly Valuable to PeopleBrowsr’s**
11 **Clients and Twitter.**

12 14. PeopleBrowsr’s products are highly valuable to its users, who utilize them to
13 extract relevant information from the massive Twitter stream, as well as to organizations
14 marketing their messages or brands. PeopleBrowsr has entered into valid contracts including: (1)
15 a three-year, \$3 million contract with defense contractor Strategic Technology Research, (2) a
16 long term, \$400,000 contract with Cadalys to build a customized Kred application, (3) a long
17 term, \$300,000 contract with Radian6 to incorporate Kred into its products, (4) a long term,
18 \$400,000 contract with Badgeville to incorporate Kred into its products, (5) a contract with
19 Mashable to power its mRank product through PeopleBrowsr’s API, and (6) a contract for at least
20 one year with DynamicLogic, worth at least \$75,000. PeopleBrowsr has business relationships
21 that are likely to ripen into new business with firms including Dell Computer, Demand Media,
22 Ogilvy, Bell-Pottinger, and CBS Interactive, among others.

23 15. PeopleBrowsr’s innovations have also been highly valuable to Twitter.
24 PeopleBrowsr provides best-in-industry analytics in a rapidly growing “Twitter Big Data
25 Analytics” market that mines very high volumes of Twitter data to provide unprecedented
26 insights. Twitter historically was focused on its core offering, and did not undertake to develop
27 this market. Through the efforts of PeopleBrowsr and a handful of other companies with the
28

1 technological capability to make sense of the massive amounts of data generated on Twitter, the
2 market for analysis of the full Twitter data stream has become a viable market with huge
3 potential. Now this market is a key focus for Twitter, which recently listed Analytics Products as
4 one of the three types of programs it seeks to encourage through its Twitter Certified Products
5 Program. (A true and correct copy of the blog post announcing the Twitter Certified Products
6 Program is attached as Exhibit C.)

7 16. PeopleBrowsr's revenues are projected to continue growing rapidly as the market
8 for Twitter Big Data Analytics continues to expand. There are many uses for Twitter data in the
9 expanding market in which PeopleBrowsr participates, and PeopleBrowsr has the potential to
10 grow exponentially as it continues to innovate in that market. PeopleBrowsr's potential to
11 provide innovative services in this increasingly valuable market, as well as its present
12 relationships, are at stake if Firehose access is terminated.

13 4. **PeopleBrowsr Built Its Business in Reliance on Twitter's Promises of**
14 **Open Data Access.**

15 17. PeopleBrowsr was willing to invest over \$5 million and more than 30,000 hours
16 developing products that rely on the full Firehose because Twitter has repeatedly and consistently
17 promised that it would maintain an "open ecosystem" for its data, and that Twitter would not use
18 its control over data to pick which companies can succeed and by removing access create losers.
19 Among the public commitments that Twitter has made to such an "open ecosystem" are the
20 following:

- 21 a. Twitter's Rules of the Road for Developers state, "Twitter maintains an open
22 platform that supports the millions of people around the world who are sharing and
23 discovering what's happening now. We want to empower our ecosystem partners
24 to build valuable businesses around the information flowing through Twitter." (A
25 true and correct copy of this blog post is attached as Exhibit D.)

- b. On March 1, 2010 Twitter's blog stated that “[e]ven before Twitter was officially a company, we opened our technology in ways that invited developers to extend the service.” (A true and correct copy of this blog post is attached as Exhibit E.)
 - c. On January 18, 2008, Twitter's blog stated, “Twitter has a warm spot for innovative simplicity and an open approach to technology development. . . [O]ur open approach is more than just good karma. . . . Gaining trust means showing our work. When a technology is shared, conversations and understanding form around it.” (A true and correct copy of this blog post is attached as Exhibit F.)
 - d. On October 21, 2009, Twitter reiterated that “[a]n open approach means value for users, value for partners, and value for Twitter. . . . Moreover, there are already tens of thousands of Twitter apps and more to come because people want the choice to consume and create tweets wherever and whenever they prefer.” (A true and correct copy of this blog post is attached as Exhibit G.)
 - e. On September 1, 2011, Twitter co-founder Jack Dorsey stated that “relationships with consumers and developers are a primary measure of our success . . . [O]ur ongoing commitment is to give you the structure, tools, resources, and support you need to build your businesses as you leverage the power of Twitter.” (A true and correct copy of this posting is attached as Exhibit H.)
 - f. On March 11, 2011, Ryan Sarver, Twitter's Head of Platform, stated that “Twitter will always be a platform on which a smart developer with a great idea and some cool technology can build a great company of his or her own.” (A true and correct copy of this blog post is attached as Exhibit I.)

18. As Twitter's blog acknowledged on May 24, 2010, Twitter was committed to an open ecosystem even if it received no money from the businesses built on its data:

Companies are selling real-time display ads or other kinds of mobile ads around the timelines on many Twitter clients, and we derive no explicit value from those ads. That's fine. . . . We don't

1 believe we always need to participate in the myriad ways in which
2 other companies monetize the network.

3 (A true and correct copy of this blog post is attached as Exhibit J.)

4 19. Twitter offered the Firehose as part of its open ecosystem, describing it as a tool
5 that should be open to all developers, regardless of size, in order to promote innovation. In
6 December 2009, Ryan Sarver, Twitter's head of platform, announced that Twitter would "provide
7 . . . the firehose for everyone in the system . . . [W]hoever needs this type of content we want to
8 be able to provide an open and transparent framework for you to gain access to it." (Video of
9 Sarver's remarks can be found at <http://www.ustream.tv/recorded/2748326>.) Twitter stated in a
10 March 1, 2010 blog post that, "[f]ull investment in this ecosystem of innovation, means all our
11 partners should have access to the same volume of data, regardless of company size. . . . With
12 access to the full Firehose of data, it is possible to move far beyond the Twitter experiences we
13 know today. In fact, we're pretty sure that some amazing innovation is possible." (See Exhibit
14 E). At its 2010 Chirp! Conference, Twitter stated that it wanted to get Firehose access to as many
15 developers as possible and was hiring employees to help ramp up access. (A true and correct
16 copy of a news account of this session is attached as Exhibit K.) Indeed, Evan Williams stated in
17 an interview in November 2011 that the original purpose of the Firehose was not to earn revenue
18 but to encourage third parties to distribute tweets. (Video of Williams' remarks is available at
19 <http://www.youtube.com/watch?v=c4xZtTYhCDA>.)

20 20. Twitter repeatedly assured me directly that it was committed to its open approach.
21 For example, on July 13, 2009, Alex Payne, a senior employee at Twitter, told me "we are all
22 fighting to keep access to the Firehose and other APIs as open as possible. We're on the same
23 page as you."

24 21. The termination provision in our agreement gave me no reason to expect that I
25 would not receive the benefits of the open ecosystem Twitter promised. Twitter repeatedly and
26 publicly offered an open ecosystem to developers, and that was what I believed I was contracting
27 for. I understood that the parties' contractual rights and obligations would be consistent with this
28

1 fundamental attribute of the Firehose service PeopleBrowsr was purchasing. Part of such an open
2 ecosystem is a commitment not to terminate data access in order to control Twitter markets and
3 interfere with competition. Twitter assured me that the termination provision would be exercised
4 in accordance with that commitment. When I asked Twitter's lead negotiator, Kelton Lynn, about
5 the provision, he told me that Twitter would respect PeopleBrowsr's rights as a developer, and
6 that the provision merely was intended to make it easier to terminate if PeopleBrowsr engaged in
7 unacceptable conduct. I did not expect that the provision entitled Twitter not to provide what it
8 had promised and I had purchased: access to an open ecosystem.

9 22. As a result, I believed that Twitter would allow PeopleBrowsr to compete freely in
10 the marketplace. I relied on Twitter's promises of openness when investing millions of dollars
11 and thousands of hours in a business that relied on the Firehose to survive. I did not believe
12 Twitter would cut off the Firehose to cripple PeopleBrowsr in the marketplace.

13 5. **PeopleBrowsr Is a Key Provider of Three Twitter Big Data Analytics
14 Services.**

15 23. PeopleBrowsr is one of a few "Twitter Big Data Analytics" providers that mine
16 very high volumes of Twitter data for in-depth insights. Its clients are not looking for less
17 sophisticated, "general Twitter data analytics," which provide more limited feedback (e.g., how
18 often a search term is mentioned on Twitter) using samples of Twitter data. The big Twitter data
19 market is substantially more sophisticated than the general data analytics market. The sheer
20 volume of data requires advanced technology and substantial resources. The services
21 PeopleBrowsr's users expect cannot be provided by general data analytics companies. Only by
22 having access to the very highest volumes of Twitter data can PeopleBrowsr compete with other
23 Twitter Big Data Analytics providers and give its users the services they expect.

24 24. PeopleBrowsr is either the sole provider or one of two providers of three Twitter
25 Big Data Analytics services: (a) Influence Measurement, where PeopleBrowsr's Kred product
26 identifies influencers in communities; (b) Action Analytics for Government and Enterprise, which
27 tracks activity related to a brand or particular markets; and (c) Financial Data Services, which

1 uses Twitter activity to detect when market changes are occurring. PeopleBrowsr is one of two
2 viable providers of Influence Measurement. It is the sole provider of Action Analytics for
3 Government and Enterprise. PeopleBrowsr and Dataminr, a close Twitter partner with Firehose
4 access, are the only Financial Data Services providers. DataSift, another close Twitter partner,
5 also intends to offer Financial Data Services.

6 **6. Losing Firehose Access Will Cause PeopleBrowsr Irreparable Harm
7 Because the Firehose Is Essential to PeopleBrowsr's Business.**

8 25. The Firehose is an essential input for PeopleBrowsr's business. PeopleBrowsr's
9 products function by creating a comprehensive view of Twitter activity, and a mere sample of
10 Twitter's data is not sufficient to provide the sophisticated analytics PeopleBrowsr's clients have
11 contracted for.

12 26. The Firehose is essential to providing results in a **timely** manner. PeopleBrowsr's
13 analytics require massive amounts of computing power and large amounts of time. Multiple,
14 layered analyses are often required to provide users with the information they seek.
15 For example, to score users' influence within a community, PeopleBrowsr must first analyze
16 users' Bios to find the members of communities (e.g., all people in the CEO Community), then
17 track all the reactions to the tweets posted by members of that community to arrive at their
18 Influence scores, and then compare Influence across all the members of the community. If
19 PeopleBrowsr had to run these analyses from scratch every time its customers posted a query, it
20 could take hours or days – by the time the analysis was complete it would be out of date. With
21 access to all Twitter activity through the Firehose, PeopleBrowsr does not need to wait for a user
22 to make a query. It can build a database of pre-built, underlying analytics (such as members of a
23 community or numbers of mentions of a brand) that are refreshed in real time as new data comes
24 in, and can be used to build the more complex products PeopleBrowsr provides to its users.

25 27. The Firehose is required to detect **emerging trends**. PeopleBrowsr offers its
26 clients highly sensitive tools to identify trends in Twitter activity at a very early stage. The ability
27 to detect trends more quickly than others is very important to financial services who want to

1 detect changes in sentiment toward a stock, government and security agencies who want to see
2 early indicators of threats, and large enterprise clients who want to analyze the components of
3 trends effecting their brands. Initial signals that a trend is forming can be very small: a single
4 tweet might start an avalanche of Twitter activity. A sample could easily miss the early signs of a
5 trend – with 10% of the data (Gnip and DataSift’s standard offering), you would have only a 10%
6 chance of having access to the key tweet that sets off a trend. Complete real-time data is
7 essential.

8 28. The Firehose provides all the tweets for **scoring** and ranking influence.
9 PeopleBrowsr scores and ranks individuals’ influence within communities (college students, for
10 example, or yoga practitioners). In order to do this, it must see what interests are mentioned in **all**
11 users’ posts and Twitter Bio data in order to determine **all** the members of those communities.
12 PeopleBrowsr must identify **all** members of the communities in order to provide a useful,
13 meaningful ranking. A user’s rank within ten percent of a community (e.g., “You are the most
14 influential of the 10% of doctors we happen to have information about”) is not a useful metric,
15 because that rank could vary widely depending on how influential the people who happen to be in
16 the sample are. PeopleBrowsr needs to compare individual influence scores to those of other
17 Twitter users in order to provide a normalized score, so that scores provide a meaningful
18 comparison between users.

19 29. The Firehose provides necessary **historical** data. PeopleBrowsr provides its
20 clients with complex analytics that require that PeopleBrowsr’s algorithms have instant access to
21 certain “building block” analyses of historical data, such as the historical number of mentions of a
22 brand, the acceleration in the number of retweets of a client’s tweets, or the communities most
23 frequently mentioning a certain Twitter user. These underlying historical analytics are
24 themselves time-consuming, requiring PeopleBrowsr to comb through a massive database for
25 relevant data. To provide timely and accurate results, these “building blocks” must constantly be
26 refreshed based on a complete data set provided in real time; otherwise, part of what a client is
27 looking for will almost certainly be missing. Clients also frequently want to see such underlying

1 historical data, such as words associated with their brand or the top communities mentioning an
2 influential user, rapidly. These analytics are only possible if PeopleBrowsr is receiving all
3 Twitter data in real time through the Firehose.

4 30. For all of these reasons, PeopleBrowsr cannot provide the products its clients,
5 business prospects, and web users expect without the Firehose. Sampling Twitter data does not
6 allow PeopleBrowsr to provide key innovations that its users desire and have contracted for, such
7 as measuring influence in communities. Though Twitter has stated that there are “data analytics”
8 providers, in the broadest sense, that do business without the Firehose, these companies do not
9 provide the same type of sophisticated, big Twitter data services as PeopleBrowsr.

10 31. Any loss of access to the Firehose will have especially devastating impact because
11 PeopleBrowsr’s business is built on long partnerships with its clients that require substantial
12 investment by PeopleBrowsr. If PeopleBrowsr cannot deliver on its contracts, it will lose its
13 investments in those relationships. It also will not be able to enter into deals with new clients.
14 PeopleBrowsr’s projections and roadmaps, which are key to its ability to obtain capital, find new
15 clients, and enjoy continued success, will be undermined.

16 32. As a result, cutting off Firehose access would cause severe harm to
17 PeopleBrowsr’s business, goodwill, and business relationships. For this reason, I have
18 communicated to Twitter on many occasions – and Twitter acknowledged – that the Firehose is
19 “essential” to PeopleBrowsr’s business, and that loss of the Firehose would be “a commercial
20 disaster.” (True and correct copies of five of these communications are attached as Exhibits L
21 through P.)

22 C. **After Extracting PeopleBrowsr’s Confidential Business Information, Twitter**
23 **Has Threatened to Cut Off the Firehose.**

24 33. In 2011, Twitter began to tell me that it intended to reserve Firehose access for
25 “Twitter-driven” partnerships. In April 2011, I emailed Twitter’s Doug Williams to request
26 authorization to state that PeopleBrowsr is a “Twitter Firehose Partner,” as three other companies
27 were already doing. Williams refused, stating, “[W]e are working much more closely with these

1 companies than the handful of companies that licensed the Firehose around this time of last year.
2 At the highest of levels, the partnerships below have all been driven by Twitter as opposed to
3 inbound interest for our data as we were looking to fill very specific product or offering holes.”
4 (A true and correct copy of this email is attached as Exhibit Q.)

5 34. Soon after, Twitter began to insist on a series of meetings at which PeopleBrowsr
6 was to reveal confidential business information such as customer lists and product roadmaps,
7 purportedly to explore a continuing relationship.

8 35. **August 2011 Meeting.** On August 1, 2011, Twitter’s Erica Anderson invited me
9 “to present PeopleBrowsr’s product suite to our [business development] team. We agree it’s
10 certainly the right time to do this and to renew a conversation about our partnership moving
11 forward.” (A true and correct copy of this email conversation is attached as Exhibit R.) That
12 meeting was held on August 11, 2011. I gave a full product demonstration, and discussed
13 PeopleBrowsr’s business plans and strategy with approximately twelve Twitter employees
14 responsible for business development and product development. After the meeting, Twitter asked
15 for PeopleBrowsr’s customer list, which PeopleBrowsr provided.

16 36. **October 2011 Meeting.** In October 2011, Twitter requested that I provided
17 PeopleBrowsr’s six-month business plan, including customers and prospects. On October 21,
18 2011, I met with Twitter’s Doug Williams, provided a demonstration of PeopleBrowsr’s Kred
19 product, and told Williams about PeopleBrowsr’s candidacy for a \$3 million Department of
20 Defense contract. At the meeting, Williams told me that Twitter would be deciding on an “inner
21 sanctum” of Firehose partners over the next six months, and encouraged PeopleBrowsr to work
22 more closely with Twitter. Williams told me that PeopleBrowsr should not pursue certain areas
23 of business, such as TV Analytics, that would compete with Twitter or its partners, and expressed
24 concern that PeopleBrowsr’s API platform would compete with Twitter.

25 37. **November 2011 Meeting.** A week later, Williams followed up by email, stating
26 that PeopleBrowsr’s “broad license is of a dying breed,” and that Twitter wanted tighter control
27 over Firehose partners. He suggested that we meet in order to “define the product PeopleBrowsr

1 wants to have in the market and how that represents a strategic win for the partnership.” (A true
2 and correct copy of this email conversation is attached as Exhibit S.) On November 23, 2011, I
3 and other PeopleBrowsr staff met with Twitter staff including Doug Williams and Ryan Sarver at
4 Twitter’s headquarters. I again presented PeopleBrowsr’s products, contracts, and business plans,
5 and reminded Twitter that PeopleBrowsr’s Department of Defense contract relied on the Firehose.
6 Twitter again directed PeopleBrowsr not to provide competing services, and prohibited
7 PeopleBrowsr from continuing a partnership with the Mass Relevance social integration platform.
8 Williams stated that Twitter desired to focus on selected “special partners,” while Sarver
9 indicated that PeopleBrowsr no longer “fit the profile” of a Firehose partner. Williams stated that
10 if the company’s relationship was to continue, Twitter would have to have a “closer relationship”
11 in which Twitter told PeopleBrowsr where to focus its efforts. I responded that we wanted to be a
12 good partner, but could not run our business effectively if Twitter dictated its direction.

13 **38. January 2012 Meeting.** On January 30, 2012, I met again with Doug Williams. I
14 told Williams that PeopleBrowsr had closed its deal with the Department of Defense for \$3
15 million. I updated Williams on PeopleBrowsr’s business prospects and plans and responded to
16 Williams’ questions about PeopleBrowsr’s technology. Williams made no indication that
17 PeopleBrowsr’s Firehose access would be terminated, stating, “Don’t worry, we’ll work it out.”

18 **39. February 2012 Accounting of Key Customers.** On February 10, 2012, again at
19 Twitter’s request, I sent Twitter’s Doug Williams a detailed accounting of PeopleBrowsr’s 30 key
20 “strategic” customers. (A true and correct copy of this email is attached as Exhibit T.)

21 **40. May 2012 Renewal Proposal and Meeting.** The next month, Twitter stated that
22 it needed to re-negotiate the terms of PeopleBrowsr’s Firehose access so that Twitter would have
23 greater control over PeopleBrowsr’s business. On March 19, 2012, Doug Williams requested that
24 PeopleBrowsr provide a formal renewal proposal for its Firehose access, stating that Twitter now
25 only agreed to Firehose access as part of “pre-negotiated product integrations under standard
26 business terms to ensure we remain aligned through the course of the Term.” He stated he would
27 use the formal proposal to “first give you feedback on the fit with current strategic priorities then

28

1 gather internal feedback on the opportunity for renewal.” As part of this proposal, Williams again
2 requested that PeopleBrowsr discuss its key accounts. (A true and correct copy of this email
3 conversation is attached as Exhibit U.) Williams followed up on April 5, 2012, stating that
4 “we’re extremely focused on limiting the number and focus of our Firehose relationships to very
5 tight, very strategic products so specificity and strategic alignment is highly encouraged.”

6 41. On May 10, 2012, I made a presentation to Doug Williams and Jana
7 Messerschmidt, a Senior Director of Business Development at Twitter, in which I described
8 PeopleBrowsr’s innovations, products, and services. I reiterated that all of PeopleBrowsr’s
9 products depend on access to the Firehose. Again, at Twitter’s request, I described
10 PeopleBrowsr’s agreements with clients including DARPA, Mashable, Dynamic Logic, Cadalys,
11 Visua.ly, Radian6, and Badgeville, identified thirty-four of PeopleBrowsr’s API customers, and
12 provided a revenue forecast.

13 42. **May 24, 2012 Direction to Transition from Firehose.** After this meeting, on
14 May 24, 2012, Williams advised me that PeopleBrowsr should plan to transition off the Firehose
15 and seek access to a portion of the Firehose data through Twitter’s resale partners Gnip or
16 DataSift. The only stated reason for the termination was that PeopleBrowsr was no longer a
17 strategic “fit” for Twitter. Williams acknowledged that terminating Firehose access would make
18 it impossible for PeopleBrowsr to continue to provide the products it was contractually obligated
19 to deliver, and could put PeopleBrowsr out of business entirely. Despite these consequences,
20 Williams maintained that PeopleBrowsr should transition off the Firehose.

21 43. **June 2012 Letter.** Faced with catastrophic injury to PeopleBrowsr’s business if
22 Firehose access were removed, I sent Twitter a letter on June 1, 2012, attempting to convince
23 Twitter to reconsider, given the threatened harm to PeopleBrowsr and competition.
24 Subsequently, Twitter indicated that it had reconsidered. In a June 30, 2012 email, I conceded a
25 billing dispute with Twitter on the basis that it would become irrelevant as the companies’
26 Firehose agreement continued. Twitter responded by saying the two companies “are once again
27 aligned.” (A true and correct copy of this email conversation is attached as Exhibit V.)

1 44. **July 25, 2012 Termination Email.** In a July 25, 2012 email, Ms. Messerschmidt
2 stated that Twitter intended to terminate PeopleBrowsr's Firehose access in 90 days. The email
3 stated that Twitter was "no longer in a position to continue to support PeopleBrowsr's current
4 month-to-month Firehose license," but provided no further explanation and no discussion of the
5 costs to Twitter to continue PeopleBrowsr's access. (A true and correct copy of this email
6 conversation is attached as Exhibit W.) Ms. Messerschmidt's email also expressed Twitter's
7 desire to move PeopleBrowsr to a new "standard for elevated data access," stating that "Twitter
8 has publicly moved away from direct legacy Firehose licenses and created channel resyndication
9 partnerships with Gnip and DataSift to address broad commercial demand in a consistent and
10 transparent manner." The email did not acknowledge, however, that Gnip and DataSift cannot
11 provide access to all of Twitter's data, nor that Twitter continues to provide full Firehose access
12 to certain partners on terms that are not publicly available.

13 **D. Twitter Has Refused to Provide Any Substantive Rationale For Termination.**

14 45. Twitter has refused to provide any substantive explanation for its decision to
15 terminate, despite repeated efforts by PeopleBrowsr to seek information and work out a mutually
16 agreeable solution to the dispute.

17 46. On July 31, 2012, I responded to Ms. Messerschmidt's termination email, stating
18 that Gnip and DataSift could not provide the data PeopleBrowsr needs, and seeking clarification
19 regarding the reasons for Twitter's threatened action. (A true and correct copy of this email
20 conversation is attached as Exhibit X.) Twitter refused to answer any of my questions, but did
21 agree to a "cooling off" period for the parties to seek mediation. Twitter stated it would terminate
22 Firehose access on November 30, 2012 if no agreement was reached at the mediation.

23 47. On August 10, 2012, I emailed Doug Williams and Jana Messerschmidt of Twitter,
24 providing a detailed explanation of PeopleBrowsr's need for the Firehose. (A true and correct
25 copy of this email conversation is attached as Exhibit Y.) Williams and Messerschmidt did not
26 respond.

27
28

48. At Twitter's direction, PeopleBrowsr held teleconferences with DataSift and Gnip to discuss their data options. Though both services stated they had access to the full Firehose, they also stated that Twitter would not authorize them to provide the full Firehose to PeopleBrowsr. At best, they could provide a fraction of the Firehose data.

49. Despite further negotiations, Twitter has provided no additional explanation. Twitter intends to terminate Firehose access on November 30, 2012.

Under penalty of perjury under the laws of the State of California, I declare that the foregoing is true and correct. Executed on _____ in San Francisco, California.

John David Rich